

## NOTICE OF AGENCY RULE-MAKING ADOPTION

**AGENCY:** Department of Marine Resources

**CHAPTER NUMBER AND TITLE:** Chapter 24.10(4)(F) Maine – Restricted Area for American Oyster; Emergency Rulemaking.

**ADOPTED RULE NUMBER:**

**CONCISE SUMMARY:** This emergency rulemaking expands the current Sheepscot River restricted area to include waters, shores, and flats between the southernmost point of Linekin Neck, Boothbay and the eastern shore of the Kennebec River. The movement of American oysters (*Crassostrea virginica*) from these waters will be prohibited, without a permit from the Maine Department of Resources (DMR), when the size of the oyster is greater than 3 mm.

The DMR finds that there is a need for this emergency rule based upon specific information obtained by the Department during routine health surveillance. Specifically, Polymerase Chain Reaction (PCR) results received on January 6, 2015 from Kennebec River Biosciences in Richmond, Maine confirmed the presence of MSX (*Haplosporidium nelsoni*) in the waters around Westport Island and south of the existing restricted area boundary. Each of the 12 5-oyster pools (n=60 oysters) sampled was found to be positive for MSX. Subsequent histology confirmed the presence of both early and late stage infection. MSX is an oyster disease caused by a microscopic parasite. It is a health and mortality problem for American oysters but does not affect human health or consumption. Oysters are routinely marketed from populations that carry MSX.

The Department finds that this emergency rule is necessary and appropriate to limit the spread of MSX infection outside of the currently affected areas. Due to the interconnectedness of the Sheepscot and Back Rivers and their many tributaries and embayments, the Department believes a wider expansion of the restricted area is warranted until additional testing can determine the extent of MSX infection.

Persons will be required to obtain a permit for the movement-but not harvest-of shellfish from restricted areas to ensure a reasonable degree of certainty that the movement will not endanger the indigenous marine life or its environment in accordance with Chapter 24.05. Permits require pathological examination, satisfactory to the Department, demonstrating the shellfish to be free of the disease(s) found in the restricted area.

The Department will pursue regular concurrent rulemaking to make this emergency regulation permanent. This emergency rulemaking is necessary to protect the American oyster resource (aquaculture and wild) from unusual damage and or imminent depletion that would be caused by continued uncontrolled movement of oysters infected by MSX throughout Maine's waters. As authorized by 12 M.R.S. §§6071 and 6171(3), the Commissioner of Marine Resources adopts this emergency regulation.

**EFFECTIVE DATE:** January 21, 2015

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## DEPARTMENT OF MARINE RESOURCES

### Chapter 24 - Importation of Live Marine Organisms

#### 24.10 Permit Issuance Criteria For Shellfish

1. The commissioner may grant a permit to import or introduce shellfish, or to possess such shellfish, only if he finds to a reasonable degree of certainty that those actions will not endanger the indigenous marine life or its environment.
2. In determining whether to issue a permit the commissioner shall consider the probable effects of the introduction of the shellfish into the recipient area, including, but not limited to:
  - A. the effects of any previous introduction of the same or a similar species in Maine or other areas;
  - B. the relationship of the species of marine organism to be introduced with other members of the recipient area ecosystem; and
  - C. the potential effects of infectious or contagious diseases, pests or parasites that might be associated with the species of marine organism to be introduced upon other members of the ecosystem of the recipient area.
3. Shellfish from the restricted areas listed in Paragraph D below shall be presumed to carry the infectious diseases, pests or parasites listed in Appendix A, unless an applicant produces sufficient evidence to rebut this presumption. The presumption may be rebutted by pathologic examination satisfactory to the Department or by a demonstration that the shellfish to be imported, introduced, or possessed have been raised in a closed-system hatchery free of the infectious or contagious diseases found in the coastal waters of the restricted area. Shellfish from areas not listed in Paragraph D must meet the requirements of Section 24.05 and demonstrate either that the shellfish do not carry the infectious disease, pests, or parasites listed in Appendix A or that the shellfish have been raised in a closed-system hatchery free from infectious or contagious diseases.
4. The following geographical areas shall be considered restricted areas for the particular species listed:
  - A. New York. The areas of New York State known as Great South Bay, Micox Bay and Fisher's Island on the north shore of Long Island shall be a restricted area for all species of shellfish;
  - B. Connecticut. The area of Connecticut known as New Haven Harbor and the federal Milford Hatchery in Milford, Connecticut shall be a restricted area for all species of shellfish;
  - C. Rhode Island. The area of Rhode Island known as Charlestown Pond shall be a restricted area for all species of shellfish;
  - D. Massachusetts. The areas of Massachusetts known as Wellfleet Harbor, Cotuit Bay, Oyster River and Wareham River shall be a restricted area for all species of oysters;
  - E. New Hampshire. The State of New Hampshire shall be a restricted area for all species of oysters;
  - F. Maine. All coastal waters within the State of Maine shall be a restricted area for the European Oyster, (*Ostrea edulis*). All territorial waters in the areas listed below shall be a restricted area for the American oyster, (*Crassostrea virginica*) greater than 3 mm in size:

- 1) Between Ocean Point, Linekin Neck, Boothbay to Pemaquid Point, Bristol
- 2) ~~The Sheepscot River and all tributaries north of the Route 1 bridge connecting Edgecomb and Wiscasset, including but not limited to the Marsh River, Sherman Lake and Deer Meadow Brook.~~ North of a line beginning at the southernmost point on Linekin Neck, Boothbay and continuing southwest to the southern tip of Kennebec Point, Georgetown, including the Sheepscot, Back, and Cross Rivers, and all tributaries.
- 3) East of the Route 127 bridge between Arrowsic and Georgetown (Back River).
- 4) East of the Route 127 bridge between Sasanoa Point, Woolwich and Preble Point, Arrowsic (Sasanoa River).

- G. New Jersey. The State of New Jersey shall be a restricted area for American oysters;
  - H. Delaware, Virginia, North Carolina, South Carolina, Florida and Louisiana. These states shall be a restricted area for American oysters;
  - I. Maryland. This State shall be a restricted area for American oysters and soft-shell clams;
  - J. California. The areas of this State known as Mono Bay, Elkhorn Slough, Drakes Estero, Tomales Bay and Humboldt Bay shall be a restricted area for Pacific and European oysters;
  - K. Washington. The area of this State known as Willapa Bay shall be a restricted area for Pacific oysters and mussels;
  - L. Canada, British Columbia. The areas of this province known as Henry Bay, Denmon Island, Seal Island, Comox Harbor, Lady Smith Harbor, Crofton, Saltair, Sibell and NanOOSE Bays shall be a restricted area for Pacific oysters;
  - M. Canada, Maritime Provinces. This area of this country shall be a restricted area for American oysters, European oysters, blue mussels and hard-shell clams.
  - N. Cuba, Venezuela, Mexico and Brazil. These countries shall be restricted areas for all species of oysters;
  - O. Netherlands and Denmark. These countries shall be restricted areas for European oysters;
  - P. France. This country shall be a restricted area for all species of oysters;
  - Q. Japan. This country shall be a restricted area for Pacific oysters;
  - R. Australia. This country shall be a restricted area for *Crossostrea commercialis*.
5. The commissioner may include any permit conditions necessary to protect indigenous marine life or its environment, including, but not limited to, quarantine of brood stock in closed system hatcheries in recipient areas, quarantine of F1 generation individuals in isolation from brood stock and small-scale introduction of F2 generation individuals into recipient areas with continuing disease study.

# Basis Statement

## Chapter 24.10(4)(F) Maine – Restricted Area for American Oyster Emergency Rulemaking

This emergency rulemaking expands the current Sheepscot River restricted area to include waters, shores, and flats between the southernmost point of Linekin Neck, Boothbay and the eastern shore of the Kennebec River. The movement of American oysters (*Crassostrea virginica*) from these waters will be prohibited, without a permit from the Maine Department of Resources (DMR), when the size of the oyster is greater than 3 mm.

The DMR finds that there is a need for this emergency rule based upon specific information obtained by the Department during routine health surveillance. Specifically, Polymerase Chain Reaction (PCR) results received on January 6, 2015 from Kennebec River Biosciences in Richmond, Maine confirmed the presence of MSX (*Haplosporidium nelsoni*) in the waters around Westport Island and south of the existing restricted area boundary. Each of the 12 5-oyster pools (n=60 oysters) sampled was found to be positive for MSX. Subsequent histology confirmed the presence of both early and late stage infection. MSX is an oyster disease caused by a microscopic parasite. It is a health and mortality problem for American oysters but does not affect human health or consumption. Oysters are routinely marketed from populations that carry MSX.

The Department finds that this emergency rule is necessary and appropriate to limit the spread of MSX infection outside of the currently affected areas. Due to the interconnectedness of the Sheepscot and Back Rivers and their many tributaries and embayments, the Department believes a wider expansion of the restricted area is warranted until additional testing can determine the extent of MSX infection.

Persons will be required to obtain a permit for the movement-but not harvest-of shellfish from restricted areas to ensure a reasonable degree of certainty that the movement will not endanger the indigenous marine life or its environment in accordance with Chapter 24.05. Permits require pathological examination, satisfactory to the Department, demonstrating the shellfish to be free of the disease(s) found in the restricted area.

The Department will pursue regular concurrent rulemaking in order to make this emergency regulation permanent. This emergency rulemaking is necessary to protect the American oyster resource (aquaculture and wild) from unusual damage and or imminent depletion that would be caused by continued uncontrolled movement of oysters infected by MSX throughout Maine's waters. As authorized by 12 M.R.S. §§6071 and 6171(3) the Commissioner of Marine Resources adopts this emergency regulation.

# Rule-Making Fact Sheet

(5 M.R.S., §8057-A)

AGENCY: Department of Marine Resources

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CHAPTER NUMBER AND RULE: Chapter 24.10(4)(F)Maine – Restricted Area for American Oyster; Emergency Rulemaking.

STATUTORY AUTHORITY: 12 M.R.S. §6071 and §6171(3)

DATE AND PLACE OF PUBLIC HEARING: None, Emergency rulemaking

COMMENT DEADLINE: None, Emergency rulemaking

PRINCIPAL REASON OR PURPOSE FOR PROPOSING THIS RULE:

This emergency rulemaking expands the current Sheepscot River restricted area to include waters, shores, and flats between the southernmost point of Linekin Neck, Boothbay and the eastern shore of the Kennebec River. The movement of American oysters (*Crassostrea virginica*) from these waters will be prohibited, without a permit from the Maine Department of Resources (DMR), when the size of the oyster is greater than 3 mm.

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This rulemaking is necessary to protect the American oyster resources (aquaculture and wild) from unusual damage and or imminent depletion that that would be caused by continued uncontrolled movement of infected oysters throughout Maine's waters. The Department will pursue regular concurrent rulemaking in order to make this emergency regulation permanent.

ANALYSIS AND EXPECTED OPERATION OF THE RULE:

Persons will be required to obtain a permit for the movement-but not harvest-of shellfish from restricted areas to ensure a reasonable degree of certainty that the movement will not endanger the indigenous marine life or its environment in accordance with Chapter 24.05. Permits require pathological examination, satisfactory to the Department, demonstrating the shellfish to be free of the disease(s) found in the restricted area

FISCAL IMPACT OF THE RULE:

Enforcement of this rule will not require considerable additional administrative activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

Rulemaking statement of impact on small business  
5 MRS §8052, sub-§5-A and §8053, sub-§3, ¶F

Agency: Department of Marine Resources

Chapter Number and Title of Rule: Chapter 24.10(4)(F) Maine – Restricted Area for American Oyster; Emergency Rulemaking

1. An identification of the types and an estimate of the number of the small businesses subject to the proposed rule:

One aquaculture leaseholder (1 lease) and 7 Limited Purpose Aquaculture (LPA) license holders (14 LPA licenses) have the potential to be affected under this modification. There are 7 additional LPA sites within the proposed restricted area but, the primary species cultivated are European oysters (*Ostrea edulis*) and seaweeds. Only farmers or wild harvesters intending to relocate American oysters from their farms or harvest sites within the restricted area to other water bodies in Maine, including for wet storage, will be affected.

2. The projected reporting, record-keeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record:

The introduction of shellfish means to land on, bring into or deposit in any place subject to the jurisdiction of the State of Maine from any restricted areas within the State of Maine. In accordance with Chapter 24.05 and 24.10, the newly expanded restricted area will require persons to obtain a permit prior to the movement, but not harvest, of American oysters from the area. Permits require pathological examination, satisfactory to the Department, demonstrating freedom from the disease(s) found in the restricted area. The cost estimates can depend upon size of the organisms tested (the number of organisms that can fit on one slide or be pooled in a Polymerase Chain Reaction (PCR) run) and the type of tests required (i.e. histology or PCR). For those affected, the pathology tests to screen for MSX only are estimated to cost between \$650 and \$1,000 for a sampling of 60 animals when both histology and PCR are employed.

3. A brief statement of the probable impact on affected small businesses:

This rulemaking is necessary to protect the American oyster resources (aquaculture and wild) from unusual damage and or imminent depletion that that would be caused by continued uncontrolled movement of infected oysters throughout Maine's waters.

4. A description of any less intrusive or less costly, reasonable alternative methods of achieving the purposes of the proposed rule:

None.

5. Indicate where a copy of the statement of impact on small business pursuant to section 8052, subsection 5-A may be obtained:

Information is available upon request from the DMR Commissioner's office, State House Station #21, Augusta, Maine 04333-0021, telephone (207) 624-6553.